

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSEPH CHARLES CASSA,
Petitioner.

No. 2 CA-CR 2015-0237-PR
Filed September 3, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pinal County

No. S1100CR95020035

The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Renee J. Waters, Deputy County Attorney, Florence
Counsel for Respondent

Joseph C. Cassa, Eloy
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Joseph Cassa seeks review of the trial court’s order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Cassa has not met his burden of demonstrating such abuse here.

¶2 In 1995, Cassa pled guilty to first-degree murder and was sentenced to life imprisonment without the possibility of release for twenty-five years. He was a juvenile at the time of his offense. In 2014, he filed a notice of and petition for post-conviction relief arguing that *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), was a significant change in the law entitling him to relief. *See Ariz. R. Crim. P. 32.1(g)*. In *Miller*, the United States Supreme Court determined that a sentencing scheme “that mandates life in prison without possibility of parole for juvenile offenders” violated the Eighth Amendment’s prohibition against cruel and unusual punishment. ___ U.S. at ___, 132 S. Ct. at 2469; *see also State v. Vera*, 235 Ariz. 571, ¶ 3, 334 P.3d 754, 755-56 (App. 2014). Cassa argued that, because Arizona had eliminated parole in 1994, he had no meaningful opportunity for release and his sentence was therefore improper under *Miller*. The trial court summarily denied relief, and this petition for review followed.

¶3 On review, Cassa repeats his argument that *Miller* applies retroactively to his case. We need not address this argument, however, because the Arizona legislature recently enacted A.R.S. § 13-716, which provides that juveniles sentenced to life imprisonment without the possibility of release for a period of

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years are “eligible for parole on completion of service of the minimum sentence, regardless of [the date of the offense].” *See* 2014 Ariz. Sess. Laws, ch. 156, § 2. As we explained in *Vera*, the opportunity for parole provided by § 13-716 remedied any defect based on the lack of opportunity for release for juveniles like Cassa who received a life sentence with the possibility of release after a term of years, and thus such juveniles are not entitled to relief based on *Miller*. 235 Ariz. 571, ¶ 27, 334 P.3d at 761.

¶4 Although we grant review, we deny relief.